



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 01 2012

201221035

Uniform Issue List: 408.03-00

T.E.P.:A.A.TI

Legend:

Taxpayer A =

IRA Annuity B =

Financial Institution C =

Financial Institution D =

Individual E =

Account F =

Account G =

Financial Institution H =

Account I =

Financial Institution J =

Account K =

Financial Institution L =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Dear :

This letter is in response to a request for a letter ruling, dated February 16, 2011, as supplemented by additional correspondence dated November 17, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age at the time of the distribution of Amount 3 from IRA Annuity B, asserts that her failure to accomplish a rollover of Amount 3 within the 60-day period prescribed by section 408(d)(3) of the Code was due to her reliance on erroneous information provided by Individual E.

Taxpayer A maintained IRA Annuity B, an individual retirement annuity under section 408(b) of the Code, with Financial Institution C. On October 20 Taxpayer A sought the advice of her accountant, Individual E, a certified public accountant employed by Financial Institution D, with regard to whether her surrender of IRA Annuity B would result in taxable income to her. Individual E explained that because the contributions exceeded the value of the annuity, no income tax would be due upon surrender of the annuity. Taxpayer A relied on this advice when she contacted Financial Institution C and requested a distribution of Amount 1 from IRA Annuity B. On November 20 Financial Institution C electronically transferred Amount 3 (Amount 1 less surrender charges of Amount 2) from IRA Annuity B to Account F with Financial Institution H.

On November 20 Taxpayer A transferred Amount 4 from Account F to Account G, also maintained with Financial Institution H. On November 20 Taxpayer A transferred Amount 5 from Account F to Account I, maintained with Financial Institution J. On November 20 Taxpayer A transferred the current balances in Accounts G and I (totaling Amount 6) to Account K with Financial Institution L. Other than those transfers between accounts, Amount 3 has not been used for any purpose.

Individual E has admitted in writing that during the preparation of Taxpayer A's tax returns for 2010, he realized that the entire amount distributed to Taxpayer A on the surrender of IRA Annuity B was subject to income taxes. Taxpayer A first became aware that the distribution was taxable income when she met with Individual E on January 29, 2011 to review her tax returns, at which time the 60-day rollover period had expired.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 3.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 3 was due to her reliance on incorrect information regarding the tax consequences of a distribution from IRA Annuity B, provided by Individual E, which resulted in Taxpayer A's failure to complete a rollover of Amount 3 within the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA Annuity B and Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute an amount not more than Amount 3 into a rollover IRA or IRA annuity. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: